EMERGING ISSUES AND CHALLENGES RELATING TO PLEA-BARGAINING : A STUDY

Ph.D. Synopsis

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1. Introduction

With judges - population ratio of 21.03[1] judges per million in year 2020, as compared to 107[2] judges per million people in the United States of America in the year 1987 itself; having thousands of Statutes in force, spanning from pre-independence era to the modern day, catering to the needs of the world's second most populated nation with one of the most complicated demographic structures; and with a legal system that largely runs on the same structure as was established prior to the independence with little reforms since then; it should not be a matter of any surprise, certainly of great concern though, that approximately 4.78 crore[3] cases are pending in all courts of India as on August 2022 and approximate average time taken for final disposal is more than 3.5 years[4].

In view of the above factual matrix about the Indian legal system, when one further talks about the criminal justice delivery system in the country, it is alarming to note that India's undertrials constitute a whopping two-thirds of the country's total inmates in year 2015. In pure statistical terms, out of some 4.15 lakhs prisoners across the country, 2.81 lakhs were undertrials in year 2015[5]. The ratio of undertrials further increased to 69%[6] of the total inmates in jails in India in year 2019 i.e. out of approximately 4.78 lakhs total prisoners in the jails in India in 2019, 3.30 lakhs were undertrials.

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1. THE ECONOMIC TIMES, *A Judge-population ratio stood at 21.03 judges per million people in 2020: Law minister*, (August 05, 2021) *available at:* https://economictimes.indiatimes.com/news/india/judge-population-ratio-stood-at-21-03-judges-per-million-people-in-2020-law-minister/articleshow/85072861.cms?from=mdr (last visited on Aug. 23, 2022).
2. Anand Sagar, *Rising Court Cases and declining "Judge-Population-Ration" in India,* 2 IJMAS 137 (2016).
3. NATIONAL JUDICIAL DATA GRID (DISTRICT AND TALUKA COURTS OF INDIA), *available at:* https://njdg.ecourts.gov.in/njdgnew/index.php (last visited on August 23, 2022); NATIONAL JUDICIAL DATA GRID (HIGH COURTS OF INDIA), *available at:* https://njdg.ecourts.gov.in/hcnjdgnew/(last visited on August 23, 2022,); SUPREME COURT OF INDIA (MONTHLY PENDING CASES), *available at:* https://main.sci.gov.in/statistics (last visited on August 23, 2022).
4. Pradeep Thakur, *Some HCs take average of 4 years per case*, TIMES OF INDIA(December 18, 2017) *available at*: https://timesofindia.indiatimes.com/india/some-hcs-take-average-of-4-years-per-case/articleshow/62111687.cms (last visited on Sept. 29, 2022).
5. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2015, *available at:* https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016_0.pdf (last visited on August 23, 2022).
6. National Crimes Record Bureau, Ministry of Home Affair, Government of India, PRISON STATISTICS OF INDIA, 2019, *available at:* https://ncrb.gov.in/en/prison-statistics-india-2019 (last visited on August 23, 2022).

Grievances have been vented in public that the disposal of criminal trials in the courts take considerable time and that in many cases trials do not commence as long as for a period of three or four years after the accused is committed to judicial custody. As indicated above, one of the major reasons behind this abysmally low disposal of cases by Judiciary is the lack of number of judges in the respective courts. Judicial process is additionally time consuming, cumbersome and expensive.

It is very oftenly quoted that the Justice delayed is justice denied. Adding on to it, the noted Indian Lawyer and Politician Mr. Abhishek Singhvi stated -

> 'The cliche 'Justice delayed is justice denied' tends to cloud the better truism: 'Justice denied is injustice perpetrated'. A festering sense of injustice invites anarchy. Most importantly, it diminishes fear to vanishing point, and while a 'fearless' society is the acme of true democracy, a society without fear (of authority) is a sure recipe for anarchy. The Indian state – in each of its judicial, executive and legislative organs – has to implement drastic structural changes and realise that the time for cosmetic surgery is long over.'[7]

Indian legal system had already adopted the alternative dispute resolution mechanism in civil cases, both at pre as well as post litigation stage, wherein any civil dispute is tried to be resolved through the modes of arbitration, mediation, conciliation and Lok Adalats and it has tasted some success with this concept in terms of reducing the work load of the courts by speedier disposal of the cases. Similar alternative dispute resolution mechanism was needed in criminal justice delivery system as well. Among other factors affecting the criminal justice delivery system, workload in courts, undue long delay in conclusion of trial of criminal cases, the agony of victim for justice for indefinite period and harassment of under trial prisoner awaiting the conclusion of trial, were major concerns to be dealt by the legislature.

So what were the alternatives to deal with the backlog by reducing the delay in concluding the trial and to send the criminals to jails? One limited answer was 'plea bargaining'.

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7. Abhishek Singhvi, *The Denial Of Justice: some fundamental reforms we need to carry out*, THE TIMES OF INDIA (December 28, 2012) *available at:*https://timesofindia.indiatimes.com/edit-page/the-denial-of-justice-some-fundamental-reforms-we-need-to-carry-out/articleshow/17786391.cms (last visited on August 23, 2022).

Though there is no universally accepted definition of plea bargaining and it may take various forms and meanings depending on the country of its jurisdiction, however, in layman'slanguage, plea bargaining simply means, 'plead guilty and ensure lesser sentence'. It is primarily based upon successful experimentations in USA on the principle of plea of "Nolo Contendere" i.e. I do not wish to contend. Black's Law Dictionary defines plea bargaining as follows:

> 'The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to Court approval. It usually involves the accused pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.'[8]

Plea Bargaining is essentially a practice where confessions are bargained from the criminal under judicial supervision which might result in speedy trial and efficient sentencing.

Plea bargaining, plea negotiation, compromising criminal cases, trading out, whatever one chooses to label it, the disposition of criminal charges short of trial is as old as the criminal law itself and as diverse in form as the countless types of criminal misconduct. Even our various Dharmashastras and Smritis propounded plea-bargaining as a means of self purification by reducing or removing the effects of sin of committing offence.

In modern era, till the midst of 20th Century, most of the courts and scholars, all over the World, tended to ignore the importance of plea bargaining, and when discussions of the practice occurred, these usually were critical. A strong criticism against it was that the plea bargaining is a lazy form of prosecution that results in undue leniency for offenders.[9]

Despite criticism of the concept due to its adverse impact on right to fair trial, constitutional validity aspects etc., plea-bargaining, in later part of 20th century, has emerged as a prominent feature of criminal justice system in some western countries, as the merits of the concept were assessed as overriding its disadvantages. Plea-bargaining, pursued with the aim of reducing caseload, is something that has been immensely successful in the United

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8. Bryan A. Garner, BLACK'S LAW DICTIONARY,1190 (2004).
9. Dr. K.P. Pradeep, *Plea bargaining- new horizon in criminal jurisprudence*, LAWYERS CLUB INDIA (December 20, 2010) *available at:* https://www.lawyersclubindia.com/articles/plea-bargaining-new-horizon-in-criminal-jurisprudence-3356.asp (last visited on August 23, 2022).

States of America, so much so that it has now become the norm rather than the exception. It is sufficient to show the success rate and endless possibilities of the concept of plea bargaining that cases disposed of in USA through plea bargaining stand at around 90-95%[10] of total criminal convictions.

After having studied legal systems of various countries and enthused by the success of plea-bargaining in other countries particularly USA and after having evaluated the need and importance of the concept, the Law Commission of India in its 142nd, 154thand 177th reports recommended to introduce the system of plea-bargaining in India, though with certain modifications. Finally, on the basis of recommendations of Justice of Malimath Committee Report on Reforms of Criminal Justice System, the Parliament introduced the concept of Plea-bargaining by way of Criminal Law (Amendment) Act of 2005 by adding chapter XXI-A in Criminal Procedure Code, to achieve few objectives which, inter-alia, included -

1. reducing disposal time of the cases;
2. improving the fate of under-trial prisoners;
3. ensuring participation of complainant/victim in the criminal justice delivery system;
4. effectively introducing the concept of compensation to the wronged one i.e. victim; and
5. providing a mechanism in criminal justice delivery system equivalent to that of alternative dispute resolution system in civil law by ensuring the participation of victim, accused, prosecution and investigating agency and assisting the trial court to deliver timely justice to all the concerned without going through the lengthy process of trial in relatively lesser grievous offences.

In this regard, it is to be remembered that though the concept of plea bargaining was recommended to be introduced in India only after observing the success of the concept in USA, however, this concept, as introduced in India, is quite different than that of USA. At the time of introduction of the concept in the country, issues like illiterate litigant, fear of pressure on victims as well as accused for a compromise, incidents of higher crime rates and corruption at all levels of justice delivery system, were some such

10. Lindsey Devers, *Plea and Charge Bargaining*, BUREAU OF JUSTICE ASSISTANCE, US DEPARTMENT OF JUSTICE(January 24, 2011) *available at:* https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf (last visited on Sept. 29, 2022).

factors that were thought to be against the idea of introducing plea bargaining in India. However, these concerns were dealt with by the Law Commission in its 142nd report and it was suggested that the benefits of plea bargaining highly outweigh its demerits. Moreover, it was expected that whatever concerns were there in respect of the introduction of the system of plea bargaining in India, the same can be overcome by launching appropriate awareness programs, training of the personnel, modifying the concept suitably to the Indian needs and by introducing safeguards, wherever required. Hence, Law Commission ended up recommending a modified version of plea-bargaining than the one that was in vogue in USA, justifying the modifications by citing the specific domestic needs, complex social structure, economic disparity, and existing justice delivery system which was already suffering from huge pendency and workload.

But on the one hand the system of plea-bargaining has been quite successful in USA, on the other hand, it has not kicked off in India despite passing of more than a decade since its introduction on the statute book. The same is evident from the fact that the ratio of the cases disposed of in India through plea-bargaining to the completed trials stands at a very meagre level of 0.74%[11] and with only 1.005%[12] of the total criminal convictions in the year 2020 secured through plea-bargaining, whereas, as stated above, the corresponding figure stands at around 90-95%[13] in case of United States of America.

Similarly, the arrears of criminal cases awaiting trial are assuming menacing proportions. At the end of year 2016, around 3.15 crore cases were languishing in the Courts of India for various reasons[14], which has considerably gone up further to approximately 4.78 crore[15] cases in August 2022.

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11. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, STATISTICS – CRIME IN INDIA, 2020, *available at:* https://ncrb.gov.in/en/Crime-in-India-2020 (last visited on August 23, 2022).
12. *Ibid*.
13. Lindsey Devers, *Plea and Charge Bargaining*, BUREAU OF JUSTICE ASSISTANCE, US DEPARTMENT OF JUSTICE(January 24, 2011) *available at:* https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf (last visited on Sept. 29, 2022).
14. INDIAN EXPRESS*, Pending cases go down in Supreme Court, High Courts; but see upward swing in lower courts* (October 01, 2017) *available at:* https://indianexpress.com/article/india/pending-cases-go-down-in-supreme-court-high-courts-but-see-upward-swing-in-lower-courts-4869471/ (last visited August 23, 2022).
15. NATIONAL JUDICIAL DATA GRID (DISTRICT AND TALUKA COURTS OF INDIA), *available at:* https://njdg.ecourts.gov.in/njdgnew/index.php (last visited on August 23, 2022); NATIONAL JUDICIAL DATA GRID (HIGH COURTS OF INDIA), *available at:* https://njdg.ecourts.gov.in/hcnjdgnew/(last visited on August 23, 2022,); SUPREME COURT OF INDIA (MONTHLY PENDING CASES), *available at:* https://main.sci.gov.in/statistics (last visited on August 23, 2022).

Likewise, total number of Under-trial prisoners in the jails in India in the year 2011 were 2.41 lakhs[16], which went up to 2.81 lakhs[17] in the year 2015 and which further went upto around 3.30 lakhs[18] in the year 2019. Even the ratio of Under-trial prisoners to total inmates in jails also went up steadily during this period i.e. from around 65.6%[19]in the year 2011 to around 67.7%[20] in the year 2015 to approximately 69%[21] in the year 2019.

The aforesaid data regarding disposal of cases through plea-bargaining, undertrial prisoners and pending criminal cases clearly reveal that the plea-bargaining scheme, as introduced in India, could not achieve the objectives behind its introduction in the staute.

2. Statement of Problem

Even after passing of more than one and a half decade since the introduction of plea-bargaining system in India, the available statistics about number of conviction secured through plea-bargaining out of total conviction in the country, the increasing pendency of criminal cases as well as the increasing number of undertrial prisoners, indicate that the plea-bargaining scheme has utterly failed to achieve the objectives with which it was introduced in India and it had remained a dead letter on the Indian statute book.

3. Objectives of the study

The present research study is designed to meet the following objectives:-

1. To analyse the need, aims, objectives, importance and feasibility of the concept in light of the thought process of the legislature in incorporating the concept of plea-bargaining in India by going into the recommendations of the Law Commission and the Committee on Reforms of the Criminal Justice System.

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16. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2011, *available at:* https://ncrb.gov.in/en/prison-statistics-india-year-2011 (last visited on August 23, 2022).
17. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2015, *available at:* https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016_0.pdf (last visited on August 23, 2022).
18. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2019, *available at:* https://ncrb.gov.in/en/prison-statistics-india-2019 (last visited on August 23, 2022).
19. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2011, *available at:* https://ncrb.gov.in/en/prison-statistics-india-year-2011 (last visited on August 23, 2022).
20. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2015, *available at:* https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016_0.pdf (last visited on August 23, 2022).
21. National Crimes Record Bureau, Ministry of Home Affairs, Government of India, PRISON STATISTICS OF INDIA, 2019, *available at:* https://ncrb.gov.in/en/prison-statistics-india-2019 (last visited on August 23, 2022).

2. To compare the concept as introduced in India vis-a-vis other countries, thereby highlighting major differences in terms of technicalities of law, reasons for success, failure, effectiveness of the concept in different legal systems.
3. To study the present legal position regarding plea bargaining in India by going into the provisions of law, judicial pronouncements and actual practices at ground level.
4. To study the impact of plea bargaining and to assess the performance in order to find out whether the concept of plea-bargaining as introduced in India, met its desired objectives.
5. To bring forth and highlight the gaps, pitfalls, shortcomings, practical problems in adopting plea bargaining both inside and outside the court, roles and difficulty faced by the concerned parties under the current legislation, rendering the law less effective resulting in failure to achieve the desired results.
6. To highlight the need of effective law on the concept of plea bargaining and its likely benefits for the victim, accused, legal and administrative machinery and for the society in general.
7. To suggest improvements/amendments in the law by in form of draft amendment statute and other measures for better implementation of the concept at ground level.

4. Review of Literature

Plea Bargaining is a wide subject on which extensive research has been done mainly by international agencies, particularly USA, though the subject remains less researched in India. The researcher has gone through extensive literature and for the purpose has taken help of various books, online journals, law commission reports, statutes passed or policies adopted by various nations and also reports by various domestic and international entities. In addition to these, the researcher has also taken help from several online articles and various pronouncements of the courts in India as well as of several other countries. Some of the very important literary works relevant to the present research are being discussed below-

Milton Heumann in his book titled as "Plea Bargaining: The Experiences of Prosecutors, Judges and Defense Attorneys"[22] has criticised the approach taken to validate

22. Milton Heumann, PLEA BARGAINING: THE EXPERIENCES OF PROSECUTORS, JUDGES AND DEFENSE ATTORNEYS (2020).

plea bargaining which is nothing but a case pressure. He has suggested an alternative explanation for plea-bargaining based on the adaptation of attorneys and judges to the Local Criminal Court. His work is limited to the Criminal Courts in USA.

Regina Rauxloh in her book titled as, "Plea Bargaining in National and International Law"[23] has analysed the wide-spread use of plea bargaining in different criminal justice systems based on both historical and comparative legal research. The author also has also suggested the adoption of plea bargaining at the International Criminal Court situated at Hague.

Richard L. Lippke in his book titled as, "The Ethics of Plea Bargaining"[24] has provided a philosophical analysis of the ethics of plea bargaining. Examining the legal processes by which individuals are moved through the criminal justice system, the fairness of those processes, and the ways in which they reproduce social inequality, this book offers an ethical argument for restrained forms of plea bargaining. It suggests that rewards for admitting guilt are distinguished from penalties for exercising the right to trial, and argues for modest, fixed sentence reductions for defendants who admit their guilt.

George Fisher in his book titled as, "Plea Bargaining's Triumph: A History of Plea Bargaining in America"[25], traces the evolution of plea bargaining from its beginnings in the early nineteenth century to its present pervasive role in the United States.

DW Maynard in his book titled as, "Inside Plea Bargaining: The Language of Negotiation"[26] analyses the concept of plea bargaining as a system of negotiation used in the criminal justice system. The author hasn't delved into the more traditional questions such as the fairness of the process, whether the process will be able to separate the innocent from the guilty but studies plea bargaining more conceptually.

Cynthia Alkon and Andrea Kupfer Schneider in their book titled as, "Negotiating Crime: Plea Bargaining, Problem Solving, and Dispute Resolution in the Criminal Context"[27] cover all of the processes through which criminal cases are resolved in the United States beyond trials. This book brings together criminal procedure, current policy debates, and dispute resolution concepts to examine the practice of criminal law in the 21st century.

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23. Regina Rauxloh, PLEA BARGAINING IN NATIONAL AND INTERNATIONAL LAW (2012).
24. Richard L. Lippke, THE ETHICS OF PLEA BARGAINING (2011).
25. George Fisher, PLEA BARGAINING'S TRIUMPH: A HISTORY OF PLEA BARGAINING IN AMERICA (2003).
26. DW Maynard, INSIDE PLEA BARGAINING: THE LANGUAGE OF NEGOTIATION (2013)
27. Cynthia Alkon & Andrea Kupfer Schneider, NEGOTIATING CRIME: PLEA BARGAINING, PROBLEM SOLVING, AND DISPUTE RESOLUTION IN THE CRIMINAL CONTEXT (2019).

KN Chandrasekharan Pillai in his book titled as, "RV Kelkar's Criminal Procedure"[28] has dealt with the general principles of criminal procedure and the criminal justice system and has also dealt with the statutory provisions pertaining to the Code of Criminal Procedure, 1973 as enacted in India. He has extensively dealt with the statutory provisions relating to the System of Plea Bargaining in India.

Justice Chandramauli Kumar Prasad and Namit Saxena in their book titles as, "Ratanlal & Dhirajlal's The Code of Criminal Procedure"[29], have done an in-depth study on the statutory provisions of the Code of Criminal Procedure, 1973 as enacted in India. The authors have dedicated a separate chapter to the statutory provisions relating to the System of Plea Bargaining in India.

Nani A. Palkhivala in his book titled as, "We, the Nation: The Lost Decades"[30] by way of his speeches, articles and essays has provided an insight and clarity on various legal, economic and political issues. In this book, the author has also dealt with the issue of speedy and timely justice among the other concerns with the working of criminal justice system.

The researcher has also studied **Law Commission of India's 142nd Report** on "Concessional Treatment for offenders who on their own initiative choose to plead guilty without any bargaining", [31] wherein the Law Commission has dealt with the concept of plea-bargaining as a practice in USA and Canada. It also examined the observations of the Hon'ble Supreme Court of India and the objections to the introduction of the system of plea bargaining in India. The commission noticed that issue of huge backlog of cases as well as the period of undertrial prisoners has been assuming menacing proportions. It further noticed that over the years the situation has not improved and in the state of affairs as were existing, it was extremely difficult to expedite the process of criminal trials in the subordinate courts and the disposal of appeals in the appellate courts. The Law Commission felt that perhaps the conditions have further deteriorated calling for immediate reform in the matter. The commission even carried out a survey to assess the views of various experts in the field about the introduction of plea-bargaining concept in India. It also dealt with the various objections

28. KN Chandrasekharan Pillai, RV KELKAR'S CRIMINAL PROCEDURE (2021).
29. K. Kannan and Anjana Prakash, RATANLAL&DHIRAJLAL'S THE CODE OF CRIMINAL PROCEDURE (2019).
30. Nani A. Palkhivala, WE, THE NATION: THE LOST DECADES (1994).
31. Law Commission of India, CONCESSIONAL TREATMENT FOR OFFENDERS WHO ON THEIR OWN INITIATIVE CHOOSE TO PLEAD GUILTY WITHOUT ANY BARGAINING, 142[ND]REPORT, (1991) *available at:* https://lawcommissionofindia.nic.in/101-169/Report142.pdf (last visited on August 23, 2022).

raised against the introduction of concept of plea-bargaining in India and finally concluded that an improved version of the practice suitable to law and legal ethos of India needs to be considered with seriousness and with a sense of urgency.

The researcher has further studied **Law Commission of India's 154th Report** on The Code of Criminal Procedure, 1973 (Act No. 2 of 1974),[32] wherein the Law Commission has dealt generally with the changes that have to be brought in the Code for the more effective working of the criminal justice system and has also dealt with the need of introduction of the system of plea bargaining in India under Chapter XIII. In line with the recommendation made in 142nd report, Law Commission at para 9 of its 154th report also recommended the introduction of concept of plea-bargaining in India.

The researcher has also studied **Law Commission of India's 177th Report** on Law Relating to Arrest, [33] wherein the Law Commission has dealt generally with the law relating to arrest with a view to clearly delineate and regulate the power of arrest without warrant vested in the Police by section 41 and other provisions of the Criminal Procedure Code. The Commission has also dealt with the law relating to plea bargaining and compounding in India under Chapter 9. It suggested that that the recommendations contained in the 142nd report and 154th Report of Law Commission of India relating to plea bargaining should be implemented at an early date.

5. Research Hypotheses

H1 - The reason for failure of concept of plea bargaining in India is inadequacy of legal provisions.

H2 - Poor implementation of existing legal provisions relating to plea bargaining has also contributed to the failure of this concept in India.

6. Scope and Limitations of the study

Researcher's findings and suggestions shall be based mainly on the basis of primary research to be conducted in States of NCT of Delhi, Haryana and Rajasthan only. The researcher is unable to extend the scope of present primary research by interviewing the respondents from the other parts of the country, due to time and budgetary constraints.

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32. Law Commission of India, THE CODE OF CRIMINAL PROCEDURE, 1973(ACT NO. 2 OF 1974), 154TH REPORT (1996) *available at:* https://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf (last visited on August 23, 2022).
33. Law Commission of India, LAW RELATING TO ARREST,177THREPORT (2001), *available at* :https://lawcommissionofindia.nic.in/reports/177rptp1.pdf (last visited on Sept. 29, 2022).

The existing law enforcement machinery and infrastructure, socio-economic conditions, legal illiteracy, poverty and availability of proper resources to a large section of population residing in these three states may significantly vary from the other parts of the country. These differences may definitely have a bearing upon the plea-bargaining concept required to be adopted to suit the specific needs of the latter.

The present research does not include the victim as well as accused in the target group, due to the large sample size required for this purpose, non-feasibility of combining such study with the present study, particularly looking at the objectives sought to achieved in the present study and also due to time and budgetary constraints.

7. Research Methodology

The research methodology to be adopted by the researcher shall be both doctrinal as well as empirical, so as to achieve the objectives of the study as well as to test the formulated hypothesis. During the first phase, doctrinal research will be conducted, which shall be complemented by empirical research during the second phase.

Doctrinal research will help the researcher to understand the concept of plea-bargaining in detail including its origin and historical evolution, its finer nuances, merits, demerits, suitability of the concept for all jurisdictions and in all legal settings, effects of other existing legal provisions on the concept of plea bargaining. Doctrinal approach shall also be followed, while surveying the legal provisions pertaining to plea bargaining as adopted and implemented by other countries, as it is not feasible for the researcher to collect the primary data from other jurisdictions due to time and budgetary constraints as well as due to the difficulty in identifying and locating the respondents and getting response from them. The said comparative study will help to find out the global trends in the adoption, implementation and success of the concept across jurisdictions. This doctrinal research shall provide the researcher with all necessary conceptual insights related to the study and will highlight the prima facie inadequacies/gaps/shortcomings in the concept as introduced in India.

Since the present research looks forward to study the exact gaps, pitfalls, shortcomings in the concept in the current Indian settings including the practical problems/difficulties faced by concerned parties/legal counsels in adopting the plea bargaining both inside and outside the court under the current legislation, as well as to test the formulated hypothesis, the same shall be achieved by complementing the doctrinal research

with the empirical research. For this purpose, the researcher shall conduct personal interviews of various jurists having vast experience in the subject, and of the persons who are dealing with plea bargaining practice at ground level such as Secretaries of District Legal Services Authorities, Judicial Officers, Private Counsels, Public Prosecutors, Legal Aid Counsels including Jail Visiting Advocates, Police Officials including Investigating Officers. This will help the researcher to understand the practical problems faced by them, inadequacies in the current law and suggestions for improvement. Due to time and budgetary constraints the empirical research shall be kept limited to States of NCT of Delhi, Haryana and Rajasthan only.

7.1 Doctrinal research

As part of doctrinal research, the researcher -

1. Shall survey the history, origin etc. of the concept in detail and shall also survey the current day practice and procedure for plea bargaining adopted in India so as to develop a clear understanding of the technicality and practicality of the concept.
2. shall study other legal provisions like law of compounding, law of probation, law of bails, etc., having direct or indirect impact upon the working of the concept in India.
3. shall conduct a comparative study of the concept of plea-bargaining as introduced and being implemented by various countries in their legal settings, the percentage of cases disposed of through plea-bargaining, difference in the plea-bargaining provisions vis-a-vis India and reasons for success/failure/effectiveness of the concept in different legal systems.

and for this purpose, the researcher –

1. shall extensively go through the various books, research articles, bare legal provisions, parliamentary debates, practice directions regarding plea-bargaining issued by various High Court/District Courts, various judgments of Supreme Court and different High Courts on plea-bargaining or related subjects, published online or offline.
2. shall, inter-alia, use the secondary data and reports published by Government/Non-Govt. Organisations such as National Crime Records Bureau (NCRB), National Judicial Data Grid (NJDG), National State Legal Service Authority, State Legal Service Authorities, Law Commission of India, Supreme

Court of India, Various High Courts, Ministry of Law and Justice, Government Committees, etc. and shall also obtain the crime statistics and relevant reports on plea bargaining published by various countries through web based resources.

3. shall obtain the specific data relevant to the present study, if the same is not readily available in the public domain, through RTI or through request letters, from the concerned legal departments/courts.

7.2 Empirical research

As indicated above, the researcher shall conduct personal interviews of various jurists having vast experience in the subject, and of the persons who are dealing with plea bargaining practice at ground level such as Secretaries of District Legal Services Authorities, Judicial Officers, Private Counsels, Public Prosecutors, Legal Aid Counsels including Jail Visiting Advocates, Police Officials including Investigating Officers.

7.2.1 Coverage

Due to time and budgetary constraints the doctrinal research shall be kept limited to States of NCT of Delhi, Haryana and Rajasthan only.

7.2.2 Target Group

1. Jurists/Teachers having vast experience in the subject.
2. Secretaries, District Legal Services Authorities.
3. Judicial Officers (having atleast 3 years experience)
4. Private Counsels (having 7 atleast years experience at bar)
5. Legal Aid Counsels including Jail Visiting Advocates (having atleast 3 years experience)
6. Public Prosecutors (having atleast 3 years experience)
7. Police Officials including Investigating Officers (minimum Sub-Inspector Rank and having atleast 7 years experience).

7.2.3 Sample Size

Total 300 respondents [i.e.100 respondents from each of the three states] which will sufficiently represent all the seven categories indicated as target group at point no. 7.2.2 above.

7.2.4 Sampling Design

Judgment/Purposive Sampling will be adopted to select the respondents, because looking at the target group, going for this form of non-probability sampling, will help the

researcher to achieve the desired objective in a better way than the probability sampling.

7.2.5 Method of Data Collection

Data shall be collected through personal interviews. Initially data from the 10-20 respondents shall be collected through in-depth/unstructured personal interviews, which will help the researcher in obtaining the detailed insight into the practical working of the concept at ground level.

The insights gained into the concept through doctrinal research as well as aforesaid in-depth/unstructured personal interviews, will help the researcher in assessing and narrowing down various aspects of the study like the primary reasons/factors responsible for the failure of the concept in India. It will also help the researcher in framing the proper questionnaire having mix of open and close ended questions for further collection of primary data. Accordingly, data from the remaining approximately 280-290 respondents shall be collected through structured questionnaires.

7.2.6 Data Analysis

Data obtained through doctrinal research shall be analysed extensively through deductive approach. Further, the data collected through empirical research shall be arranged in a systematic way and wherever possible, shall be tabulated and the same shall be analysed using appropriate statistical tools so as to achieve the desired objective as well as to test the formulated hypothesis.

7.2.7 Conclusion and recommendations

Conclusion shall be derived after analysing the data obtained through doctrinal as well empirical research and after testing the hypothesis, and on the basis of the same, future course of action, including the amendments required in existing legal provisions in the form of draft amendment statute as well as in the current practice andprocedure, shall be suggested.

8. Significance of the Study

It has been around more than one and a half decade that relying upon the success of plea-bargaining in USA, the concept was introduced by Parliament in India with some modifications. As stated above, this system is quite successful in USA, whereas it has utterly failed to pick up at the ground level in India.

The present study will bring to the fore detailed reasons as to why the concept has failed to bring any noticeable and desirable change in Indian criminal justice system and to understand the lacunae in the concept of plea bargaining (as introduced in India) per se as

also to find out the problems, if any, with the implementation aspect of it and the way forward. The study will also seek to re-establish the need as well as importance of Plea Bargaining in Indian Criminal Justice Delivery System.

The importance of the study lies primarily in analysing the reasons for incorporating the concept of plea bargaining in Indian legal system and its impact on the administration of criminal justice. The study will help in understanding legal aspects and drawbacks pertaining to plea bargaining in India. The hypothesis formulated aims to assess that the efficacy of modifications done at the time of introduction of the concept of plea bargaining in India and also the flawed implementation of the scheme contributing to the failure of the concept.

Further, the legislature is yet to come out with any amendments for making the concept of plea-bargaining more workable in India despite the fact that more than 15 years have elapsed since the introduction of this concept in India. Therefore, the present study will not only study the reasons for failure of the concept but will also propose the necessary suggestions in the legal provisions and implementation part of it, which will make the concept more workable in India and will ensure that the concept sees the light of the day and bring the desired results, which were envisaged at the time of introduction on the Indian statute book.

9. Tentative Chapterisation

Chapter 1: Introduction

In this Chapter, the researcher has covered the basic introduction to the study along with an overview of the concept of plea-bargaining. The review of literature has been done and the statement of problem has been described clearly. The objectives of the study, its hypothesis, the significance of the study, the research methodology to be adopted to meet the research objectives, limitations and further scope for the study and finally, the structure of the thesis, have also been annunciated.

Chapter 2: Concept and Genesis of Plea-Bargaining

In this Chapter, the researcher will pen down meaning, concept, types of plea-bargaining as also the advantages and disadvantages of the concept per se, in detail. The researcher will also deal with the emergence of concept in India post independence while tracing its origin and history in India and shall also deal with a brief history of evolution of concept in foreign countries.

Chapter 3: Constitutional aspects and Legal Framework pertaining to Plea-Bargaining in India

In this Chapter, the researcher will deal with the constitutional aspects related to the concept as well as current day legal position, practice and procedure of plea-bargaining concept in India by reviewing existing statutory provisions and practice directions issued various by High Courts. The researcher will also study various judicial precedents that deal with the concept of Plea-Bargaining.

Chapter 4: Related legal concepts having impact on the working of plea bargaining in India

In this Chapter, various other legal provisions like law of compounding, law of probation, law of bail etc., shall be surveyed to assess their impact on success/failure of the plea-bargaining.

Chapter 5: Legal Framework in respect of Plea-Bargaining in other Jurisdictions and Comparative Analysis

In this Chapter, the researcher will be dealing with the legal framework of the plea-bargaining system as it exists in other Jurisdictions of the world as also their rate of success/failure and will try to deduce reasons for the same. The researcher will then embark upon the comparative position of the concept in other Jurisdictions with India.

Chapter 6: Collection, preparation and analysis of Data

In this chapter, the researcher will present the details about the primary survey and the brief about questions administered to the respondents alongwith the summary of the responses given by them. This primary data shall also be arranged in a systemic manner and wherever possible, it shall be tabulated. Thereafter, the researcher shall extensively analyse the data obtained through doctrinal research as well as empirical research using appropriate tools, which will help the researcher to test the hypothesis as also to reach definitive conclusions.

Chapter 7: Conclusion and Recommendations

This Chapter shall be devoted to the conclusions reached on the basis of detailed evaluation of data and after testing the hypothesis, and researcher shall also pen down a wholesome future course of action including the necessary amendments required in existing legal provisions as well as in the current practice and procedure.

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